

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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THOMAS LAUMANN, FERNANDA
GARBER, ROBERT SILVER, and PETER
HERMAN, representing themselves and all
other similarly situated,

Plaintiffs,

v.

NATIONAL HOCKEY LEAGUE, et al.,

Defendants.
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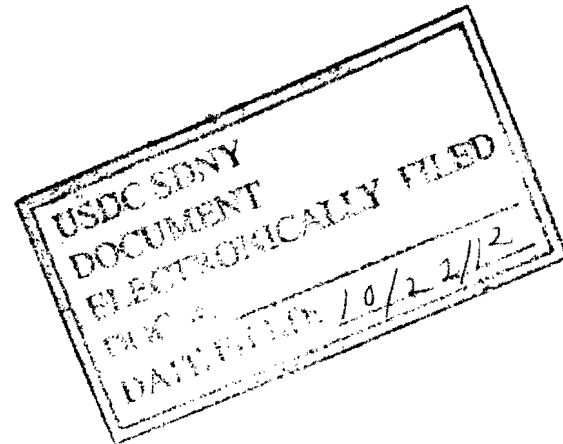
----- X
FERNANDA GARBER, MARC LERNER,
DEREK RASMUSSEN, and ROBERT
SILVER, representing themselves and all other
similarly situated,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF
BASEBALL, et al.,

Defendants.
----- X



ORDER

12 Civ. 1817 (SAS)

12 Civ. 3704 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

Plaintiffs in the above-captioned related actions have sued defendants alleging antitrust violations arising out of the broadcast and transmission of live professional baseball and hockey games on television and over the Internet.¹ Following the exchange of pre-motion letters,² defendants jointly moved to dismiss all claims on July 27, 2012.³ Plaintiffs now move to amend their Complaints pursuant to Federal Rule of Civil Procedure 15(a) for the purpose of adding or substituting parties. Specifically, plaintiffs seek leave to: (1) correct errors in the identification of certain Comcast-affiliated Regional Sports Network defendants; (2) correct a misidentification of one of the Major League Baseball clubs; (3) add Garrett Traub as an additional plaintiff in both the *Garber* and *Laumann* matters; and (4) add David Dillon as an additional plaintiff in the *Laumann* matter.⁴

¹ Plaintiffs in *Laumann v. NHL*, filed their initial complaint on March 12, 2012 and an Amended Complaint pursuant to an endorsed stipulation on May 2, 2012. *See Laumann* Docket No. 45. The complaint in *Garber v. MLB* was filed on May 9, 2012 and has not yet been amended. *See Garber* Docket No. 1.

² *See* Hon. Shira A. Scheindlin Individual Rules and Procedures Rule IV(B).

³ *See Garber* Docket No. 65. Motions were fully submitted on September 21, 2012.

⁴ *See* Motion for Leave to Amend with Memorandum of Points and Authorities (“Pl. Mem.”) at 1-2 [*Garber* Docket No. 75]. Plaintiffs informed defendants of their intent to seek leave to amend in a letter dated September 13,

Defendants are correct that it would have been preferable for plaintiffs to make these amendments prior to the filing of defendants' motion to dismiss.⁵ However, that is not sufficient reason to abandon this Court's policy of ruling on motions to dismiss addressed to Plaintiffs' best set of pleadings, particularly in light of Rule 15(a)'s instruction that leave to amend should be freely given, and the absence of any demonstrated prejudice to defendants or bad faith on the part of plaintiffs in not moving to amend earlier.⁶ The fact that this Court may ultimately dismiss the claims on one or more of the grounds argued in defendants' pending motion to dismiss does not render the proposed amendments futile. Furthermore, it is more efficient to address possible deficiencies now, than to dismiss with leave to amend at a later date.

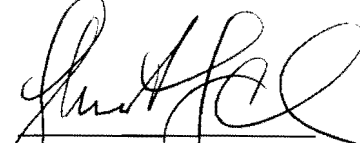
2012, which defendants opposed by letter dated October 1, 2012. *See id.*

⁵ *See* Defendants' Opposition to Plaintiffs' Motion for Leave to Amend ("Def. Mem.") at 2.

⁶ *See Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993). Defendants argue that plaintiffs were aware from the premotion letters of the claimed deficiencies in their Complaints – specifically that certain Comcast entities were improperly named, that plaintiffs lacked standing to bring claims based on MLB Extra Innings because no plaintiff had purchased that package, and that the wrong Chicago Cubs entity was sued in the original complaints – and that they therefore waived the right to amend. *See id.* They do not, however, argue that they will be prejudiced by this delay, nor could they plausibly do so. There is no reason to believe that the Chicago Cubs would have made arguments different from those set forth in the Motion to Dismiss, and to the extent that the amendments raise any new issues, defendants will have the opportunity to address them.

For the foregoing reasons, plaintiffs' motion to amend is granted. The Amended Complaints must be filed by October 26, 2012 and preferably earlier. Defendants may address any new issues raised by the amendments in a brief not to exceed ten pages, due ten days from the date the Amended Complaints are filed. If necessary, plaintiffs may respond in a five-page memorandum within five days of receipt of defendants' memorandum. The Clerk is directed to close these motions (*Garber* Docket Entry # 75, *Laumann* Docket Entry # 83).

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: October 22, 2012
 New York, New York

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